

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES J. ISON AND THE ISON
LAW FIRM, PC,

Plaintiffs,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN FRANCISCO,
ETHAN P. SCHULMAN, et al.,

Defendants.

No. 2:21-cv-01546-JAM-KJN

**ORDER GRANTING DIAMOND
DEFENDANTS' MOTION TO DISMISS
(ECF NO. 38)**

The matter is before the Court on Stuart D. Diamond and Stuart D. Diamond Law & Mediation Office's ("Diamond Defendants") motion to dismiss Plaintiffs' First Amended Complaint ("FAC"). FAC, ECF No. 12.; Mot. to Dismiss ("Mot."), ECF No. 38. Plaintiffs oppose the motion. See Opp'n, ECF No. 46. Defendants replied. See Reply, ECF No. 48. For the reasons set forth below, the Court GRANTS Defendants' motion to dismiss.¹

¹This motion was deemed suitable for submission without hearing under E.D. Cal. L.R. 230(g). The hearing was scheduled for July 11, 2023.

I. BACKGROUND

The parties are familiar with the facts of this case. The Court will therefore only repeat them as necessary to support its Order herein. This action stems from an unsuccessful mediation session in the case of Talens v. The Japanese Feast, Inc. (Case No. 19-cv-05403). FAC ¶ 63. Plaintiffs represented Brenda Talens. Defendant Mercury Casualty insured and defended The Japanese Feast, Inc. Id. ¶ 65. Defendant Diamond mediated the session on December 16, 2020. Id. ¶ 103.

The mediation concluded after four hours without a settlement. Id. ¶ 85. Because parties were held in separate conference rooms during the mediation, Plaintiffs did not see the other side. Id. ¶ 71. Plaintiffs began to suspect that Defendant Mercury's adjuster, Defendant Brenda Strong, did not actually attend the mediation. Id. ¶ 83. Plaintiffs requested confirmation from Defendant Diamond the next day that Strong had in fact been in attendance. Id. ¶ 73. Strong's attendance at the mediation was one of the conditions Plaintiffs raised in Talen to dismiss one of Mercury's insured from the suit. Id. ¶¶ 72-83. Defendant Diamond presented proof of Strong's attendance, including a signed attendance sheet, parking receipts, and a voided check for lunch costs, but Plaintiffs remained unsatisfied. Id. Plaintiffs refused to dismiss the agreed upon party from suit, prompting Mercury to seek monetary sanctions against them for failure to dismiss. Id.

This prompted Plaintiffs to file a state action in San Francisco Superior Court against Mercury and Kern Segal, the attorney representing Mercury. Id. ¶¶ 91-92. Plaintiffs

1 asserted defamation, abuse of process, civil rights violation,
2 intentional infliction of emotional distress, fraud and deceit,
3 and violations of California's Unfair Competition Law ("UCL"),
4 Cal. Bus. & Prof Code §§ 1700, et seq. In response, Mercury
5 filed, and Defendant Judge Schulman granted an anti-SLAPP motion,
6 striking all claims. See July 12, 2021, Order, Defs.' Request
7 for Judicial Notice ("RJN"), ECF No. 15-4. The state court found
8 that the defendants in state court had provided ample evidence
9 Strong was physically present at the mediation. Id.

10 Plaintiffs moved for reconsideration and, in their motion,
11 made numerous accusations that attacked the integrity of Judge
12 Schulman and the bench on which he sits. See September 20, 2021,
13 Order, Defs.' RJN, ECF No. 15-6. Plaintiffs doubled down on
14 their attacks in their opposition to Mercury's motion to tax
15 costs. Id. Judge Schulman denied Plaintiffs' motion for
16 reconsideration and granted Mercury's motion for costs. Id.
17 Judge Schulman also found Mr. Ison in direct contempt for his
18 statements attacking the court, fined him \$5,000, and directed
19 the clerk of court to forward his findings and judgment to the
20 State Bar. Id. Plaintiffs appealed Judge Schuman's order. The
21 appellate court dismissed the appeal.

22 On August 27, 2021, Plaintiffs filed suit in federal court
23 based on the same facts, alleging claims for constitutional
24 violations, violations of the Racketeer Influenced and Corrupt
25 Organizations Act ("RICO"), 18 U.S.C. §§ 1961 et seq., and fraud.
26 Plaintiffs sued both judicial and non-judicial defendants. The
27 Judicial Defendants include Chief Justice of California Tani
28 Cantil-Sakauye, Judge Ethan P. Schulman, the Judicial Council of

1 California, and the Superior Court of California, County of San
2 Francisco. The Non-Judicial Defendants include Mercury General
3 Corporation (erroneously sued as Mercury Insurance Company),
4 Mercury Casualty Company, California Automobile Insurance
5 Company, Randall R. Petro, Tara L. Strong, Kern Segal & Murray,
6 Phillip A. Segal, Bryana S. McGuirk, Todd P. Drakeford, Michael
7 G. Thomas (erroneously sued as Michael S. Thomas), Grace M.
8 Harriett (erroneously sued as Grace M. Harriet), Stuart D.
9 Diamond, and Stuart Diamond Law & Mediation Office.

10 All Judicial Defendants and all Non-Judicial Defendants,
11 except for Stuart D. Diamond and Stuart Diamond Law & Mediation
12 Office, moved to dismiss Plaintiffs' claims against them. See
13 ECF Nos. 15 & 22. The Court granted both motions and dismissed
14 all claims with prejudice. Because Diamond Defendants had not
15 been served, the Court issued an order to show cause as to why
16 service had not been completed within 90 days per Fed. R. Civ.
17 P. 4(m). ECF No. 28. Plaintiffs filed a satisfactory response
18 and thereafter cured service. Defendants Diamond and Diamond Law
19 come now before the Court to request dismissal of the claims
20 against them under Fed. R. Civ. P. 12(b)(1) for lack of subject
21 matter jurisdiction.

22 II. OPINION

23 A. Legal Standard

24 Federal courts are courts of limited jurisdiction. Kokkonen
25 v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). The
26 burden of establishing jurisdiction rests upon the party
27 asserting it. Id. Lack of subject matter jurisdiction may be
28 raised by either party at any point during the litigation via

1 12(b)(1) motion. Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006).
2 Even if parties do not raise it, the Court has an affirmative
3 duty to determine whether subject matter jurisdiction exists.
4 Fed. R. Civ. P. 12(h)(3). "Jurisdiction is power to declare the
5 law, and when it ceases to exist, the only function remaining to
6 the court is that of announcing the fact and dismissing the
7 cause." Ex parte McCardle, 74 U.S. 506, 514 (1869).

8 When a party makes a facial attack on a complaint,
9 jurisdiction must be determined on the pleadings. Safe Air for
10 Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). The
11 Court shall consider the factual allegations of the complaint to
12 be true and determine whether they establish subject matter
13 jurisdiction. Savage v. Glendale Union High Sch. Dist. No., 205,
14 343 F.3d 1036, 1039, n.1 (9th Cir. 2003)

15 B. Discussion

16 Defendants assert that Plaintiffs' claims are barred by the
17 Rooker-Feldman doctrine and principles of res judicata and that
18 the Court therefore lacks subject matter jurisdiction over this
19 case. For the reasons below, the Court agrees.

20 1. Rooker-Feldman Doctrine

21 "Under Rooker-Feldman, a federal district court does not
22 have subject matter jurisdiction to hear a district appeal from
23 the final judgment of a state court." Noel v. Hall, 341 F.3d
24 1148, 1154 (9th Cir. 2003). When a plaintiff loses his case in
25 state court and then seeks relief from the allegedly erroneous
26 state court judgment in federal court, the resulting federal suit
27 is "a forbidden de facto appeal." Id. at 1156. Not only is a
28 district court barred from hearing de facto appeals from state

1 court, a district court "must also refuse to decide any issue
2 raised in the suit that is 'inextricably intertwined' with an
3 issue resolved by the state court in its judicial decision." Id.
4 at 1158.

5 Of the three claims levied against the Diamond Defendants,
6 Plaintiffs' § 1983 and RICO claims are squarely barred by Rooker-
7 Feldman. As Plaintiffs admit, "Plaintiffs' federal claims are
8 premised on Mercury's, Diamond's and Kern Segal's violation of
9 his constitutional rights flowing from their colluding with a
10 state court judge to effectuate a result designed to damage
11 Plaintiffs and enrich themselves." Opp'n at 16 (emphasis added).
12 As such, these claims clearly seek to redress an injury inflicted
13 by the state court's decision and therefore fall under the purvey
14 of Rooker-Feldman. As the Ninth Circuit in Noel instructs,
15 "[t]he Rooker-Feldman doctrine, generally speaking, bars a
16 plaintiff from bringing a § 1983 suit to remedy an injury
17 inflicted by the state court's decision." Noel, 341 F.3d at 1165
18 (quoting Jensen v. Foley, 295 F.3d 745, 747-48 (7th Cir. 2002))
19 (internal citations omitted). Because Plaintiffs characterize
20 their Civil Rights Act and RICO causes of action the same way,
21 namely that both "flow[] from [Defendants] colluding with a state
22 court judge," both come within the scope of Rooker-Feldman.
23 Opp'n at 16. Accordingly, this Court finds it lacks subject
24 matter jurisdiction to hear either claim.

25 What remains is Plaintiffs' fraud claim, which is based on
26 the same set of facts as Plaintiffs' fraud claim in the state
27 court action. Because the state court already ruled on
28 Plaintiffs' fraud claim and because the facts are largely

1 duplicative, Plaintiffs' fraud claim is "inextricably
2 intertwined" with the state court judgment below. "Once a
3 federal plaintiff seeks to bring a forbidden de facto appeal, as
4 in Feldman, that federal plaintiff may not, as part of the suit
5 in which the forbidden appeal is brought, seek to litigate an
6 issue that is 'inextricably intertwined' with the state court
7 judicial decision from which the forbidden de facto appeal is
8 brought." Noel, 341 F.3d 1158. Accordingly, this Court finds it
9 also lacks subject matter jurisdiction over Plaintiffs' fraud
10 claim and the Diamond Defendants are entitled to dismissal of
11 Plaintiffs' fourth, fifth, and sixth claims against them.
12 Further finding that amendment would be futile, the Court
13 dismisses these claims with prejudice. Deveraturda v. Globe
14 Aviation Sec. Servs., 454 F.3d 1043, 1049 (9th Cir. 2006).

15 2. Res Judicata

16 Diamond Defendants assert that the same claims barred by
17 Rooker-Feldman are also barred by the doctrine of res judicata.
18 Mot. at 7. Under 28 U.S.C. § 1738, federal courts must give
19 "full faith and credit" to judgments of state courts. In
20 California, claim preclusion applies if (1) the second lawsuit
21 involves the same "cause of action" as the first, (2) the first
22 lawsuit resulted in a final judgment on the merits, and (3) the
23 party claim preclusion is being asserted against was a party, or
24 in privity with a party, to the first lawsuit. Bernhard v. Bank
25 of Am. Nat. Trust & Sav. Ass'n, 19 Cal.2d 807, 812, 122 P.2d 892
26 (1942).

27 Having found dismissal proper under the Rooker-Feldman
28 doctrine, the Court will not belabor its analysis under res

1 judicata. As the Court previously observed, the conduct at
2 issue is the same conduct adjudicated in the underlying San
3 Francisco Superior Court state proceedings, only now repackaged
4 for federal court. Further, there has been a final judgment on
5 the merits of the state court and there is no appeal pending.
6 Finally, Plaintiffs are parties in both actions, satisfying the
7 last element for claim preclusion. As such, claim preclusion is
8 appropriate. It suffices here to say that had any claim not
9 been dismissed under Rooker-Feldman, it would have been
10 dismissed under claim preclusion.

11 III. ORDER

12 For the reasons set forth above, the Court GRANTS
13 Defendants' Motion to Dismiss with prejudice.

14 IT IS SO ORDERED.

15 Dated: August 21, 2023

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17 
18 JOHN A. MENDEZ
19 SENIOR UNITED STATES DISTRICT JUDGE
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